

Remarks

Because Applicants are filing this Preliminary Amendment within one month of the Advisory Action, a petition and check for a one month extension of time is included in addition to the payment for a CPA. Applicants authorize the Examiner to charge Account No. 19-4516 for any other outstanding charges.

The Examiner has rejected claim 10 under 35 U.S.C. §112 as being indefinite. Applicants amended claim 10 to overcome the rejection. As amended, claim 10 now defines the elevated temperature to be above a sample analysis temperature, which is greater than the ambient temperature, where ambient temperature is known in the art to be the surrounding temperature. Moreover, the specification provides a more detailed discussion on the elevated temperature range, including a numerical range, where the elevated temperature is generally greater than the temperature in which the sample is analyzed in the container, or the sample analysis temperature.

Additionally, Applicants added new claim 14 that more narrowly defines the elevated temperature to be above a de-gassing temperature, where the de-gassing temperature is greater than the sample analysis temperature. De-gassing is defined to be freeing of gas or evacuation of gases. Webster's Unabridged Dictionary, 2nd Ed. (1999). The de-gassing temperature is defined on pages 4-5 of the specification to be a temperature to which the containers are heated such that the marking agents do not contaminate the sample in the sample container during the analysis, e.g. by de-gassing. Hence, the method elevates the temperature of the container above a temperature where the marking agents may evaporate into gas and applies container identification at this elevated temperature.

Because Applicants have defined the elevated temperature relative to ambient and de-gassing temperatures, and because the specification further provides a standard for ascertaining the degree, claims 10 and 14 are not indefinite. "The fact that claim language, including terms of degree, may not be precise, does not automatically render

the claim indefinite under 35 U.S.C. §112, second paragraph, *Seattle Box Co. v. Industrial Crating and Packing, Inc.*, 731 F.2d 818 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.” MPEP §2173.05(b) Relative Terminology.

The Examiner also rejected claims 5-6 and 9-13 under 35 U.S.C. §102(b) as being anticipated and claims 2 and 7-8 under 35 U.S.C. §103(a) as being obvious over JP405000821A to Ono (“Ono”).

Applicants’ invention is directed to a method for labeling containers using an identification being applied during elevated temperatures. The method requires the following steps: elevating a temperature of the container to an elevated temperature above a sample analysis temperature, which is greater than ambient temperature and applying container identification to the container at the elevated temperature.

In a narrower embodiment, Applicants’ invention includes elevating a temperature of the container to an elevated temperature above a de-gassing temperature, which is greater than a sample analysis temperature, and applying container identification to the container at the elevated temperature.

Applying identification to the container at the elevated temperature, which is above the sample analysis temperature or de-gassing temperature, provides an advantage over the prior art. The inventive method inhibits volatiles that may be present in the markings used to make identification from evaporating and contaminating the sample by de-gassing because the sample analysis temperature, the temperature of the container during the experiment, is below the temperature at which the identification is applied. Hence, any de-gassing or evaporation will have already occurred at the elevated temperature prior to the container being used and will not occur at the lower sample analysis temperature. This benefit provides a distinct advantage not anticipated by Ono.

Ono does not disclose, teach, or suggest elevating a container temperature above a sample analysis temperature nor, at the elevated temperature, applying container identification to the container, wherein the sample analysis temperature is greater than ambient temperature, which is known in the art to be the surrounding temperature. In fact, Ono never mentions any sample analysis temperature or that the sample analysis temperature is greater than ambient temperature. Therefore, Ono cannot disclose, teach, or suggest elevating a container temperature above, and relative to, the sample analysis temperature, which in turn is relative to the known ambient temperature. Moreover, Ono does not disclose, teach, or suggest applying bar codes at this elevated temperature to prevent de-gassing or evaporation of the markings used to make the identification during the sample analysis.

Ono does not disclose, teach, or suggest elevating a container temperature above a de-gassing temperature, which is greater than a sample analysis temperature, nor, at the elevated temperature, applying container identification to the container. In fact, Ono never mentions any de-gassing temperature or its relation with the sample analysis temperature. Therefore, Ono cannot disclose, teach, or suggest elevating a container temperature above the de-gassing temperature and relative to the sample analysis temperature. Moreover, Ono does not disclose, teach, or suggest applying bar codes at this elevated temperature to prevent de-gassing or evaporation of the markings used to make the identification during the sample analysis.

As shown on the attached figure A, which represents a schematic diagram of Applicants' invention, the elevated temperature at which the identification is applied to the container is above the sample analysis temperature, which is greater than ambient temperature. Figure B shows a narrower embodiment of Applicants' invention where the elevated temperature at which the identification is applied to the container is above the de-gassing temperature, which is greater than a sample analysis temperature. Therefore, Applicants' inventive method that includes the step of elevating a temperature of the container to an elevated temperature above a sample analysis and de-

gassing temperatures, which are greater than ambient temperature, means the step is practiced in the area marked as A' and B', respectively.

As shown on the attached figure C, which represents a schematic diagram of Ono, the bar coding is applied as the glass is cooled, whether or not the temperature is above or below the sample analysis temperature. Hence, Ono does not specify the temperature interval in which the bar code is applied and may apply the bar code in the area marked as C', below the sample analysis temperature.

Applicants respectfully submit that all elements of Applicants' claimed invention are not disclosed, taught, or suggested by Ono. Therefore, the rejection under 35 U.S.C. §102 should be withdrawn.

For the following reasons, Applicants respectfully submit that modifying Ono to provide a sample analysis temperature being greater than ambient temperature and the step of elevating a temperature of the container to an elevated temperature above the sample analysis temperature for applying identification would not be obvious. For the following reasons, Applicants also submit that modifying Ono to elevate a temperature of the container above a de-gassing temperature, which is greater than a sample analysis temperature, would not be obvious.

Before a reference may be modified in a rejection under 35 U.S.C. §103, some motivation for the artisan to make the modification must be shown. There is no teaching or suggestion in Ono to provide a sample analysis temperature being greater than ambient temperature or the step of elevating a temperature of the container to the elevated temperature, which is above the sample analysis temperature for applying identification. There is also no teaching or suggestion in Ono to elevate a temperature of the container above a de-gassing temperature. Without these requisite teachings or suggestions, Ono does not provide any reason or logic for such modifications. In addition, Ono makes no reference to preventing volatiles from the markings used to make the identification from de-gassing or evaporating during the sample analysis, where such a disadvantage is addressed and overcome in Applicants' application. Hence, there is no reason why one skilled in the art would modify the prior art to arrive

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at the claimed invention. Therefore, the rejection under 35 U.S.C. §103 should be withdrawn.

Based on the foregoing amendments and remarks, Applicants respectfully submit that all pending claims are allowable.

Respectfully submitted,



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